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12 XUDONG LI

13 **UNITED STATES BANKRUPTCY COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN JOSE DIVISION**

16 In re:

17 Zhicheng Construction Inc.,

18 Debtor.

19 Xiong et. al.

20 v.

21 Zhicheng Construction Inc. et. al.  
22

Case No.: 24-51240 SLJ  
Chapter 7

AP Case # 24-05028

**MOTION FOR ABSTENTION, REMAND  
AND RELIEF FROM STAY**

**Date:** October 8, 2024

**Time:** 1:30 p.m.

**Place:** **\*\*Hybrid Hearing:** either in person in  
Courtroom 10, 3rd Fl., 280 South First Street  
San Jose, CA 95113-3099 **OR** by Telephonic  
or Video Conference

**Chief Judge:** Hon. Stephen L. Johnson

23 **TO THE HONORABLE CHIEF JUDGE STEPHEN L. JOHNSON, THE**  
24 **UNITED STATES TRUSTEE'S OFFICE FOR THE NORTHERN DISTRICT OF**  
25 **CALIFORNIA, THE STANDING CHAPTER 7 TRUSTEE FRED HJELMESET, ALL**  
26 **CREDITORS / PARTIES IN INTEREST, AND THEIR RESPECTIVE COUNSEL(S)**  
27 **OF RECORD:** Come now Plaintiffs LING XIONG, SHENGLI XI, and XUDONG LI  
28 (collectively "Movants"), by and through their counsel of record, FARSAD LAW OFFICE,

1 P.C., and file the instant MOTION FOR ABSTENTION, REMAND AND RELIEF FROM  
2 STAY (“Motion”) regarding their State Court Action against the Defendant and its owner that  
3 is / was set for a Long Cause trial in the local Superior Court, starting October 21, 2024. The  
4 Movants would like to go back to state court to finally obtain some redress to this saga that  
5 really should have been resolved sooner, but for the Debtor and its owner, and the  
6 horrendously shoddy construction they did for the Movants.

## 7 I. INTRODUCTION

8 On August 25, 2021, the Movants filed an unlimited civil complaint against the  
9 Defendant-Debtor (Zhicheng Construction Inc.) and its owner, Huaizhi Li, in Santa Clara  
10 County Superior Court. The Case number is 21CV388579. The causes of action (all of which  
11 are brought under CA state law) are:

- 12 i. Negligence;
- 13 ii. Breach of Contract;
- 14 iii. Breach of the Implied Covenant of Good Faith and Fair Dealing;
- 15 iv. Intentional Interference with Prospective Economic Advantage; and
- 16 v. Unfair Business Practices.

17 A short summary of the State Court Action / Complaint: The Defendant was hired to do  
18 a ~600 square foot addition. The Defendant did a horrible job. He caused a ton of extra damage  
19 in that the Defendant did not shore up the walls properly and they collapsed. A simple addition  
20 turned into a “Major Remodel” for the City. Further, when he did the foundation on the project,  
21 the setback he chose was 7 feet, when it was supposed to be no less than 10. There were  
22 several more similar problems. It became evident that Mr. Huaizhi Li (owner of the  
23 Debtor/corporation) did not know what he was doing. When the Movants finally decided to fire  
24 the Debtor, the Debtor’s owner, Mr. Li, attempted to extort them to release the permit under  
25 the Debtor’s name (in exchange for him to keep all money paid and for a release of claims).

26 The Movants, a husband and wife and friend, just wanted to do add an addition to the  
27 subject home in Sunnyvale, and it became an absolute nightmare. They ended up spending  
28

1 over \$300,000.00 with nothing to show for it. The Debtor also has been fighting this case in  
2 lieu of taking responsibility. When it became blatantly apparent that he will be held liable and  
3 his personal assets at stake, he files this Chapter 7 for his corporation. He then tries to remove  
4 this case to simply frustrate the Movants and ‘kick’ the trial date that is set. The latter likely  
5 worked but the sooner said case is back in the State Court (if this Motion is granted), the  
6 sooner that the trial focusing on the “Alter Ego” liability of Defendant, Mr. Li can commence.

7 Accordingly, this Court should exercise its permissive powers of abstention, remand,  
8 and relief from stay to return the State Court Action back to the jurisdiction of the Santa Clara  
9 County Superior Court for all proceedings through trial, with enforcement of any resulting  
10 judgment reserved for this Court if this bankruptcy case is still pending as to the Debtor but not  
11 its owner, who did not file for Bankruptcy relief.

## 12 13 **II. PROCEDURAL BACKGROUND**

14 On August 15, 2024, the Debtor filed a voluntary petition for relief under Chapter 7 of  
15 the Bankruptcy Code. Exactly one day after commencing the Chapter 7 case, on April 16,  
16 2024, the Debtor caused the State Court Action to be removed to this Court. The Debtor’s  
17 Notice of Removal was filed in the main Chapter 7 case as Docket # 16. The Debtor cites to 28  
18 U.S.C. §1452(a) and Bankruptcy Rule 9027(a) as the legal grounds for removal. The Debtor  
19 further cites to 28 U.S.C. §1334 which provides for the exclusive jurisdiction of bankruptcy  
20 cases with the district court.

## 21 22 **III. LEGAL ARGUMENT**

### 23 **A. This Court Should Abstain From Hearing The Adversary Proceeding.**

24 In the case of In re Tucson Estates, Inc., (9th Cir. 1990) 912 F.2d 1162, the Ninth  
25 Circuit enumerated 12 factors to be considered when deciding whether abstention and  
26 concurrent relief from stay is appropriate. These factors are: (1) the effect or lack thereof on the  
27 efficient administration of the estate if a Court recommends abstention, (2) the extent to which  
28 state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the

1 applicable law, (4) the presence of a related proceeding commenced in state court or other  
2 nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the  
3 degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the sub-  
4 stance rather than form of an asserted “core” proceeding, (8) the feasibility of severing state  
5 law claims from core bankruptcy matters to allow judgments to be entered in state court with  
6 enforcement left to the bankruptcy court, (9) the burden on [the bankruptcy court’s] docket,  
7 (10) the likelihood that the commencement of the proceeding in bankruptcy court involves  
8 forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the  
9 presence in the proceeding of nondebtor parties. In re Tucson Estates, Inc., 912 F.2d at 1167.

10 In evaluating the Tucson Estates’ factors, the overwhelming weight of the factors  
11 favors granting this motion to abstain from retaining jurisdiction and hearing the Debtor’s State  
12 Court Action. Abstaining from hearing the Civil Action will not adversely impact the  
13 administration of this Chapter 7 case. The Santa Clara County Superior Court is better poised  
14 to deal with the claims and counter-claims raised in the State Court Action, with the  
15 Bankruptcy Court reserving jurisdiction on all issues of enforcement of any resulting judgment.  
16 The State Court already set the matter for a final settlement conference as well as Long Cause  
17 Trial in October 2024, which means that the case is finally ready to go after 3 years of  
18 litigation.

19 In addition, liquidating the claims in the Superior Court will be more efficient and an  
20 economical use of judicial resources as this Court will have to catch up on 3 years’ worth of  
21 filings and rulings if it chooses to retain the case. Further, the main Defendant, the owner of  
22 Debtor, did not file for bankruptcy relief and so there is no “Stay” in effect as to him and so  
23 taking this case back to State Court as to both him and his entity (the Debtor), seems  
24 appropriate.

25 The second and third factors together are perhaps the most compelling reasons for  
26 granting abstention: The State Court action is based completely on state law claims / issues.  
27 The claims do not arise under any federal statute, but rather are solely based on California law.  
28 The Bankruptcy Court should abstain where there is no jurisdictional basis in the federal courts

1 other than the pending bankruptcy case and the “related to” jurisdiction which 28 U.S.C. §1334  
2 confers. Since the dispute is one that can be timely adjudicated in an appropriate California  
3 court that already had jurisdiction over the parties and set a trial date, this Court should abstain,  
4 remand, and grant limited relief from the automatic stay to allow the State Court Action to  
5 proceed in the California courts (with the requirement that the parties return to the Bankruptcy  
6 Court for purposes of enforcement of any resulting judgment, if the bankruptcy case remains  
7 pending). The legal issues presented are best adjudicated by the State Court through a trial by  
8 jury. These factors strongly favor abstaining from hearing the State Court Action.

9 The fourth factor, the presence of related proceeding commenced in state court or other  
10 non-bankruptcy court, also favors granting abstention. There is a cross complaint filed in this  
11 matter which also needs to be adjudicated and the same State Court Judge has been dealing  
12 with that cross complaint this entire time as well. This factor also favors granting abstention.

13 The fifth factor, the jurisdictional basis other than 28 U.S.C. §1334, also favors  
14 granting abstention. There is no other basis for a federal court to hear the claims presented by  
15 the Complaint save and except for the “related to” jurisdiction of this bankruptcy case. 28  
16 U.S.C. §1334(c)(2) discusses that in considering a motion for abstention, the Court shall  
17 abstain upon a timely motion of a party in a proceeding based upon a State law claim or State  
18 law cause of action, related to a case under title 11 but not arising under title 11 or arising in a  
19 case under title 11, with respect to which an action could not have been commenced in a  
20 federal District Court absent jurisdiction under 28 U.S.C. §1334. Here, there is no  
21 jurisdictional basis in the federal courts other than the pending bankruptcy case and the  
22 “related to” jurisdiction which 28 U.S.C. §1334 confers. Since the dispute is one that can be  
23 timely adjudicated in the State Court that already has jurisdiction over the parties, this  
24 Bankruptcy Court should likely abstain.

25 The sixth factor, the degree of relatedness or remoteness to the proceeding in the main  
26 bankruptcy case strongly favors remanding the State Court Action back to the Superior Court.  
27 The Debtor is a corporation and in a Chapter 7 case, there is no “discharge” applicable for  
28 corporations. We understand that the Debtor may have filed to ‘wind up’ its affairs, but as it’s

1 not going to obtain a standard discharge, there is no valid reason to not remand to allow the  
2 Movants to seek the alter ego liability against the owner of the Inc., which is the main concern  
3 for them and the trial.

4 Moreover, the State Court can adjudicate the State Court Action including the  
5 complaint and cross-complaints therein and if Movants prevail as they expect to do, then those  
6 findings of the Superior Court easily transfer over to this Court, if necessary, to decide what if  
7 any effect it may have on the Chapter 7.

8 The seventh factor is the substance rather than the form of an asserted “core”  
9 proceeding. A proceeding, including a pending action removed from another court, is only a  
10 “core” proceeding if it falls within one of the limited provisions of 28 U.S.C. §157(b)(2) as  
11 follows: (2) Core proceedings include, but are not limited to— (A) matters concerning the  
12 administration of the estate; (B) allowance or disallowance of claims against the estate or  
13 exemptions from property of the estate, and estimation of claims or interests for the purposes  
14 of confirming a plan under Chapter 11, 12, or 13 of title 11 but not the liquidation or estimation  
15 of contingent or unliquidated personal injury tort or wrongful death claims against the estate  
16 for purposes of distribution in a case under title 11; (C) counterclaims by the estate against  
17 persons filing claims against the estate; (D) orders in respect to obtaining credit; (E) orders to  
18 turn over property of the estate; (F) proceedings to determine, avoid, or recover preferences;  
19 (G) motions to terminate, annul, or modify the automatic stay; (H) proceedings to determine,  
20 avoid, or recover fraudulent conveyances; (I) determinations as to the dischargeability of  
21 particular debts; (J) objections to discharges; (K) determinations of the validity, extent, or  
22 priority of liens; (L) confirmations of plans; (M) orders approving the use or lease of property,  
23 including the use of cash collateral; (N) orders approving the sale of property other than  
24 property resulting from claims brought by the estate against persons who have not filed claims  
25 against the estate; (O) other proceedings affecting the liquidation of the assets of the estate or  
26 the adjustment of the debtor-creditor or the equity security holder relationship, except personal  
27 injury tort or wrongful death claims; and (P) recognition of foreign proceedings and other  
28 matters under Chapter 15 of title 11. 28 U.S.C. §157(b)(2).

1 This factor does not favor this Court retaining the case as the State Court Action as  
2 even though the case affects the Debtor Inc. -- it really doesn't / no discharge is applicable (11  
3 U.S.C. 727(a)(1)).

4 The eighth factor requires a review of the feasibility of severing state law claims from  
5 core bankruptcy matters to allow judgments to be entered by a state court, but leaving  
6 enforcement to the Bankruptcy Court. This is precisely the type of factor that favors abstention  
7 in this case. The Superior Court can easily decide all of the state law issues presented by the  
8 complaint and cross-complaints of the parties. Further, Movants expect that a trial would take  
9 weeks (as it's set for Long Cause) and that is a substantial amount of time and burden on this  
10 Bankruptcy Court. The nature of these disputes is such that they should be tried on consecutive  
11 days and it is often difficult, if not impossible for the Bankruptcy Court to dedicate that kind of  
12 time to one trial with its regularly scheduled law and motion and other periodic calendars. This  
13 factor strongly favors abstention.

14 The tenth factor inquires whether the commencement of the proceeding in Bankruptcy  
15 Court is likely the result of forum shopping by one of the parties. The Debtor filed this Chapter  
16 7 petition to avoid trial as it's closing in finally after 3 long years. Factor 10 therefore favors  
17 abstention as well.

18 Factor 11 concerns the existence of a right to a jury trial. In the Superior Court, both the  
19 Debtor and Movants are legally entitled to a jury trial in the State Court Action. Movants have  
20 not waived their right to a jury trial. In Bankruptcy Court, there are no jury trials. This factor  
21 therefore favors abstention as well.

22 Finally, factor 12 reviews the presence of non-debtor parties and how that might  
23 adversely impact the proceeding in Bankruptcy Court or prevent the Bankruptcy Court from  
24 entering final orders or judgments. Movants plan to file their required statement with this Court  
25 advising that they do not consent to the entry of final orders and judgments by the Bankruptcy  
26 Court. This factor therefore favors abstention.

1 In summary, the overwhelming factors identified by the Ninth Circuit in Tucson Estates  
2 favor granting this motion to abstain from hearing the State Court Action in this Court and  
3 support remand and abstention.

4  
5 **B. Together with Abstention, this Court Should Remand the Civil Action**  
6 **Back to the State Court and Grant Limited Relief From Stay.**

7 Under 11 U.S.C. §362(a), the State Court Case has not been stayed as to the Debtor's  
8 owner which is the main Defendant in the case. This Court should grant relief from stay for the  
9 limited purposes of permitting all matters between these parties pertaining to their claims  
10 against each other to proceed in one forum, the Superior Court. This avoids the potential for  
11 inconsistent decisions. 11 U.S.C. §362(d)(1) permits this Court to terminate, modify or  
12 condition the automatic stay for cause. The concomitant grant of relief from stay together with  
13 the order granting abstention is common and necessary for the intention of an order granting  
14 abstention to be fully carried out by the Superior Court. Cause therefore exists to grant relief  
15 from stay along with abstention in this matter. So long as this Chapter 7 case remains open,  
16 Movants suggest that the Court's order granting relief from stay be limited to those  
17 proceedings culminating in the entry of a judgment after trial if it deems it necessary (likely  
18 not, due to no discharge applicable and the fact that the Movants will be proceeding against the  
19 Debtor's owner, a non bankrupt party / Defendant).

20 U.S.C. §362(d)(1) provides that the Court shall lift the automatic stay upon a showing  
21 of "cause". The term "cause" is not defined in the statute but is to be construed by bankruptcy  
22 courts on a case-by-case basis. In re Tucson Estates, Inc., 912 F.2d at 1166. In determining  
23 whether "cause" exists to permit litigation outside the bankruptcy court to proceed, courts have  
24 identified a series of factors, referred to as the "Curtis factors," that are potentially relevant to  
25 the inquiry. In re Badax, LLC, 608 B.R. 730, 738- 39 (Bankr. C.D. Cal 2019); Truebro, Inc. v.  
26 Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.), 311 B.R. 511, 558  
27 (Bankr. C.D. Cal. 2004) (citing In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) and  
28 other authorities).

1 The Ninth Circuit Bankruptcy Appellate Panel has recognized that the Curtis factors are  
2 appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the  
3 automatic stay to allow pending litigation to continue in another forum.” In re Kronemyer, 405  
4 B.R. 915, 921 (9th Cir. BAP 2009). While the Curtis factors are widely used to determine the  
5 existence of “cause”, not all of the factors are relevant in every case, nor is a court required to  
6 give equal weight to each factor. Plumberex, 311 B.R. at 560. Consideration of several of the  
7 applicable Curtis factors in these circumstances supports that this Court should grant relief  
8 from the automatic stay to allow the State Court Action to proceed.

#### 9 10 **IV. CONCLUSION**

11 Movants pray that the Court enter its order as follows:

12 A. Abstain from exercising jurisdiction over the State Court Action which has  
13 been removed to this Court and instead order the matter remanded to the Santa Clara  
14 County Superior Court for further proceedings through the entry of judgment;

15 B. Grant Movants relief from the automatic stay pursuant to 11 U.S.C. §362(a)  
16 in order to proceed to entry of judgment in the Civil Action, however Movants will take  
17 no action to enforce or perfect a judgment entered in the Civil Action against the  
Debtor so long as this bankruptcy case remains open as to the corporate Debtor entity;

18 C. For an Order waiving the 14-day period contained in Fed. R. Bankr. P. 4001(a)(3) as  
19 Movants would sustain irreparable injury or harm if it were not allowed to immediately  
proceed to address the pending trial and related dates set in the Superior Court; and,

20 D. For such other and further relief as this Court deems just and proper.  
21  
22

23 RESPECTFULLY SUBMITTED,

24 Executed on September 4, 2024 at San Jose, California.

25 FARSAD LAW OFFICE, P.C.

26 By: /s/ Arasto Farsad

27 Arasto Farsad, Esq.

28 Attorneys for Movants